

STATE OF MICHIGAN

IN THE SIXTH CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

v

No. 07 214651FC

STEVEN LINDSEY MCBURNEY

Defendant

JURY HEARING

BEFORE HONORABLE DANIEL PATRICK O'BRIEN

FEBRUARY 27, 2008

\* \* \* \*

APPEARANCES:

Sarah Pope Starnes, Esq.  
On behalf of the People

Robert White, Esq.  
On behalf of Defendant

Barbara Reznick, Court Reporter

OAKLAND COUNTY  
07-214651-FC  
JUDGE DANIEL P. O'BRIEN  
PEOPLE v MCBURNEY, STEV

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Pontiac, Michigan

WEDNESDAY, FEBRUARY 27, 2008

\* \* \*

THE CLERK: The Court calls People  
versus McBurney, case number 07 214651 FC.

MR. WHITE: Good ---

MS. POPE-STARNES: (Interposing) Good  
afternoon Your Honor.

MR. WHITE: (Continuing) afternoon  
Your Honor. Sorry.

MS. POPE-STARNES: Sarah Pope-Starnes,  
assistant prosecuting attorney on behalf of the  
People.

THE COURT: Thank you.

MR. WHITE: Robert White appearing on  
behalf of Mr. McBurney to my immediate right.

THE COURT: Thank you Counsel.  
Ready to proceed?

MR. WHITE: Yes.

THE COURT: Sir, why don't you come on  
back up and get situated. It's another day. Once  
the Jury is here, I'll have you resworn, okay?

And Jeff or Jessica, bring in the Jury?

THE CLERK: Yes Your Honor.

THE COURT: Oh by the way. This South

1           Lyon gentleman, from the --- there's a form, don't  
2           worry.   We'll see if we can find it just to make  
3           sure that we got everything proper, okay?

4                   A VOICE:   Appreciate it.

5                   THE COURT:   No problem.

6                   THE CLERK:   All rise for the Jury.

7           (Whereupon the Jury was returned to the courtroom.)

8                   \* \* \*

9                   THE COURT:   Hello again everyone.   Long  
10          time no see.

11                  You may all be seated.

12                  The record will reflect that the Jury is back.

13                  Thank you.   You may be seated or actually I'll  
14          have you stand up in just a second anyways.

15                  The case has been called.   Counsels' names have  
16          been noted.   As you can see the witness is back on  
17          the stand.

18                  And since it's another day Sir, I'd ask you to  
19          please stand, face my Clerk, and raise your right  
20          hand to be sworn.

21                   THE CLERK:   **Do you swear the testimony**  
22                   **you are about to give will be the truth, so help you**  
23                   **God?**

24                   THE WITNESS:   **Yes.**

25                   THE COURT:   Okay.   You can have a seat

1           there.

2           I believe we left off getting ready for cross-  
3 exam, is that correct?

4           MR. WHITE:    I believe so.

5           THE COURT:    Okay.   Mr. White, you may  
6 proceed.

7           MR. WHITE:    May I move the podium Judge?

8           THE COURT:    Sure.    Mm-hmm.

9           **M A T T H E W   C A L U S**

10          **WAS THEREUPON CALLED AS A WITNESS HEREIN, AND AFTER**  
11          **HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE**  
12          **WHOLE TRUTH, AND NOTHING BUT THE TRUTH WAS EXAMINED**  
13          **AND TESTIFIED AS FOLLOWS:**

14                       **CROSS-EXAMINATION**

15   **BY MR. WHITE:**

16   **Q**    Mr. Calus, uh ---

17           MR. WHITE:    If I may I approach the  
18 witness Your Honor?

19           THE COURT:    You may.

20           MR. WHITE:    I have a document.    I'm  
21 just going to ask him to look at it briefly.    It's  
22 the Washington --- Washtenaw County EMS run.

23           THE COURT REPORTER:    I'm sorry.    I  
24 can't hear you.

25           MR. WHITE:    The Washtenaw County EMS run

1 of November thirtieth (30th).

2 **(By Mr. White, continuing)** Have you seen that document  
3 before?

4 A Yes.

5 Q And is that your writing?

6 A Yes.

7 Q Okay. All right.

8 And when did you prepare this document Mr.  
9 Calus?

10 A I --- it would have been after the call on that date.

11 Q And how long after?

12 A At the hospital. From the time we arrived at the  
13 hospital, probably fifteen (15), twenty (20) minutes.

14 Q Okay.

15 And did you prepare this document with anybody's  
16 assistance?

17 A I believe that's all my writing.

18 Q Did anyone help you with the information that was  
19 provided in this document?

20 A Yes. Some of the information was obtained from the  
21 firefighters that were on scene that I therefore  
22 wrote on my document.

23 Q Right.

24 I mean --- but what I'm asking is if when you  
25 actually filled out this form was somebody helping

1 you at the time putting in the content?

2 A It's all my writing there.

3 Q So you did it all by yourself?

4 A Yes.

5 Q Okay.

6 Umm --- and umm --- on November thirtieth (30th)  
7 when you responded to 311 Scott Street in South Lyon,  
8 you arrived and uh --- the child was being given  
9 oxygen, correct?

10 A Yes.

11 Q Okay.

12 And umm --- the child had not been intubated?

13 A No.

14 Q And the child was not breathing on her own, correct?

15 A That's not correct.

16 Q She was given oxygen but she was breathing on her own  
17 also?

18 A Yes.

19 Q She was having agonal respirations?

20 A No.

21 Q And what are agonal respirations?

22 A Agonal respirations are spontaneous respirations that  
23 is pretty much like the body's last defense to try to  
24 make itself breathe again.

25 Q Okay.

1                   Now what is the reason why, to your  
2                   understanding, a child this age is being given  
3                   oxygen? What is the first thing that you thought  
4                   of?

5   A           It's standard treatment for anybody with respiratory  
6                   distress.

7   Q           So it meant that the child in your mind was under  
8                   respiratory distress, right?

9   A           Well anybody that's unresponsive ---

10   Q           (Interposing) Is that a 'Yes' or a 'No'?

11   A           Can you repeat the question?

12   Q           Did it mean at the time that you walked in there and  
13                   saw her being given oxygen that she was in  
14                   respiratory distress?

15                   MS. POPE-STARNES: Objection. Calls  
16                   for speculation. He testified someone else was  
17                   doing it. Someone else has made that decision.  
18                   It's speculation as to why someone else would have  
19                   done it.

20                   MR. WHITE: I'm not asking ---

21                   THE COURT: (Interposing) Go ahead.  
22                   Respond.

23                   MR. WHITE: I'm not asking him to  
24                   speculate why someone else was doing it. I'm asking  
25                   him why? What he thought at that time.



1 THE COURT: From a medical perspective?

2 MR. WHITE: From a medical perspective.

3 THE COURT: The Court will allow the  
4 answer.

5 THE WITNESS: I had not obtained all the  
6 information from the time I walked in. The oxygen  
7 was already being given.

8 **(By Mr. White, continuing)** Okay.

9 But did that mean to you that the child was in  
10 respiratory distress?

11 A At that point I didn't know if the child was in  
12 respiratory distress.

13 Q Okay.

14 So it didn't mean anything to you, is that your  
15 testimony?

16 A It's standard treatment for pretty much anything.

17 Q Okay.

18 Anything. Okay.

19 But you knew from your dispatch --- you knew  
20 from your dispatch that you have a situation that  
21 you're walking into with an infant barely breathing,  
22 correct?

23 A Yes.

24 Q Okay.

25 Now umm --- how long after you walked in the

1 door did you walk out with the child?

2 A Four, five, six minutes. Something like that.

3 Q And is it a fair statement Mr. Calus that things were  
4 pretty hectic, correct?

5 A There's --- there were a lot of people there. I  
6 mean I don't think it was all chaos. I think  
7 everybody had their position filled.

8 Q Okay.

9 But you had a child in a medical emergency  
10 situation, correct?

11 A It always adds a lot ---

12 Q (Interposing) Unless you were ---

13 A (Continuing) of anxiety. What was your question?

14 Q My question is you had a child in an emergency  
15 medical situation?

16 A It appeared that way, yes.

17 Q Now when you picked up the child and took her into  
18 the ambulance, did you do so with oxygen still on her  
19 face?

20 A Yes.

21 Q Okay.

22 So she remained oxygenated up to the time that  
23 you picked her up all the way into the ambulance,  
24 correct?

25 A Yes.

1 Q Now umm --- you did hear some of the history given,  
2 isn't that true?

3 A Yes.

4 Q From Mr. McBurney, the father?

5 A I don't recall who gave it to me in the house. I  
6 believe it was one of the firefighters that told me  
7 in the house. I remember Mr. McBurney gave me the  
8 information in the ambulance when I specifically  
9 asked him.

10 Q He told you that, 'The child had been vomiting during  
11 the day'?

12 A I don't recall if he was the one that specifically  
13 told me that or if it was the firefighter. I  
14 believe he told me at the house, yes.

15 Q Okay.

16 The child had been sick during the day, correct.

17 A No. No.

18 Q He said, 'The child had been vomiting'?

19 A He said, 'The child vomited.' He said, 'The child  
20 was acting normal when it woke up from its nap and  
21 then vomited. Vomited after feeding.' I'd have to  
22 look at my report to recall the order of events.

23 Q Doesn't your report say, 'Patients father stated ---

24 MS. POPE-STARNES: (Interposing)

25 Objection. He said that he would have to look at



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1 his report. I think he should be given an  
2 opportunity to refresh his memory before he's  
3 impeached.

4 THE COURT: Go ahead.

5 MR. WHITE: If I may approach?

6 THE COURT: You may approach.

7 THE WITNESS: Okay.

8 **(By Mr. White, continuing)** Does that refresh your  
9 recollection?

10 A Yes.

11 Q The father did tell you that the child had been  
12 vomiting throughout the day, correct?

13 A That's what it states in my report, yes.

14 Q Now umm --- other than this EMS run did you uh ---  
15 prepare any kind of written statement in this case?

16 A A written statement, no.

17 Q Umm --- the child --- the father had told you that  
18 the child was barely breathing, correct?

19 A I don't recall who told me that the child was barely  
20 breathing.

21 Q Would your report refresh your recollection?

22 A Yes it would.

23 Q Okay.

24 MR. WHITE: If I may approach again Your  
25 Honor?

1 THE COURT: You may.

2 (By Mr. White, continuing) Why don't you just read it,  
3 the whole thing and then I won't have to keep on  
4 coming back up?

5 A Okay.

6 Q Does that refresh your recollection?

7 A Yes.

8 Q Okay.

9 The father did tell you that the child was  
10 barely breathing, correct?

11 A That's what it says in my report.

12 Q Okay.

13 Written by you, right?

14 MS. POPE-STARNES: Objection. Asked  
15 and answered.

16 THE COURT: Sustained.

17 (By Mr. White, continuing) Now uh --- so you knew you had  
18 a child in respiratory distress. You knew the  
19 father provided information the child is barely  
20 breathing. The father had provided you information  
21 that the child was vomiting throughout the day,  
22 correct?

23 MS. POPE-STARNES: Objection. Asked  
24 and answered.

25 THE COURT: Sustained.

1 (By Mr. White, continuing) Now when you got in the  
2 hospital --- got into the ambulance Mr. Calus, you in  
3 the back with the child, correct?  
4 A Yes.  
5 Q Father went in the front passenger seat, correct?  
6 A Yes.  
7 Q Okay.  
8 And umm --- firefighter Kevin Schuldt was in the  
9 back, a South Lyon firefighter, correct?  
10 A Yes.  
11 Q With you, right?  
12 A Yes.  
13 Q And the driver of the vehicle was who?  
14 A It was another firefighter.  
15 Q Who was that?  
16 A Tim Wilson.  
17 Q Now when you umm --- went into the ambulance the  
18 child was flaccid initially, correct?  
19 A Yes.  
20 Q Okay.  
21 Pupils pinpoint?  
22 A Yes.  
23 Q Okay.  
24 And in approximately five minutes away from the  
25 residence the child's eyes rolled back in her head,



1 correct?

2 A From the residence? I wasn't there five minutes  
3 before. I'm not sure.

4 Q Five miles --- five minutes away from the residence  
5 as you were leaving the residence. Five minutes or  
6 less away from the residence as you were proceeding  
7 to University of Michigan Hospital.

8 A I don't believe I recorded that time. I'm not sure.

9 Q Did the child's eyes roll back in her head?

10 A I do not recall.

11 Q Okay.

12 And umm --- did the child go into extreme  
13 respiratory distress while in the ambulance?

14 A No.

15 Q And isn't it true that there were several times when  
16 the child's pulse was seventy (70) or less? Seventy  
17 (70) beats or less per minute?

18 A I'd have to check my report to see if that was  
19 documented.

20 MR. WHITE: May I approach this witness  
21 again Your Honor?

22 THE COURT: You may. You may.

23 THE WITNESS: No. I didn't document it  
24 that the pulse went below seventy (70).

25 Q **(By Mr. White, continuing)** So what you're saying is

1 if it's not documented on your report, it's not true,  
2 is that a fair statement?

3 A I don't understand what you're asking me.

4 Q What I'm asking you first of all, do you remember  
5 independently of your report, whether the child's  
6 pulse was seventy (70) beats a minute or less,  
7 anytime while she was in that ambulance?

8 A No.

9 Q You don't remember? Or you're saying, 'No that it  
10 wasn't'?

11 A I'm saying if it's not documented that I don't  
12 believe it happened. I would have documented if it  
13 dropped below what was on there.

14 Q What happens when a person's pulse, a child eleven  
15 (11) months old, gets below seventy (70) beats per  
16 minute?

17 A It slows down.

18 Q What happens to ---

19 A (Interposing) That's slower than normal.

20 Q What's happening to the body, in your training?

21 A The blood pressure may go lower. Umm --- I'm sure  
22 there's a number of events that can happen.

23 Q Okay.

24 From your training what is happening to the ---  
25 to the body at that point? What is happening to

1 that person?

2 A It would be decompensating.

3 Q Well what does that mean?

4 A Getting worse.

5 Q So she went into the --- she went into the ambulance  
6 with a mask of O2, correct?

7 A Mm-hmm.

8 Q Being bagged, right?

9 A Yes.

10 Q But then decided to try another procedure to try to  
11 give her more oxygen, correct?

12 A Yes.

13 Q And what was that?

14 A (No verbal response.)

15 Q What was that?

16 A Well to get more oxygen you mean?

17 Q Yes.

18 A Well the non-rebreather that we had her on is a  
19 hundred percent (100%) oxygen so we couldn't really  
20 give her more than that.

21 Q Okay.

22 So why did you try to change the --- why did you  
23 try to take the mask off and do something else?

24 A When we tried intubating? Is that what you're  
25 referring to?

1 Q Well ---

2 A (Interposing) When my partner and I tried  
3 intubating?

4 Q Your partner, firefighter Timmerman, correct?

5 A No.

6 Q Who else was in the back then?

7 A Dennis Timmerman, who's a paramedic. Kevin Schuldt  
8 was a firefighter.

9 Q Okay.

10 I'm sorry. Kevin Schuldt was a firefighter.

11 So you tried intubating her, correct?

12 A Yes.

13 Q And you couldn't, could you?

14 A Well it wasn't that I couldn't. It's that I  
15 determined she wasn't going to be responsive to it.  
16 She still had a gag reflex.

17 Q So you weren't able to intubate her?

18 MS. POPE-STARNES: Objection. Asked  
19 and answered.

20 THE COURT: I got it. Sustained.

21 Q **(By Mr. White, continuing)** What else did you try to  
22 do to get her oxygen?

23 A We assisted, well ---

24 Q (Interposing) I asked you.

25 A Well Kevin and I ---

- 1 Q (Interposing) There you go.
- 2 A (Continuing) Kevin and I assisted ventilations with
- 3 a bag-valve mask.
- 4 Q Anything else?
- 5 A We --- as Kevin and I, Kevin was holding the oxygen
- 6 for me while I attempted the intubation. He was
- 7 holding the oxygen next to the child's face to get
- 8 blow-by oxygen while we --- while I attempted
- 9 intubating.
- 10 Q And you were asking Kevin for help in giving the
- 11 child oxygen, isn't that true?
- 12 A It was more of a mutual understanding that he knew
- 13 what to do.
- 14 Q All I asked Sir, did you ask Kevin for help to
- 15 oxygenate this child?
- 16 A I --- I --- he knew what to do.
- 17 Q Did you ask him for help?
- 18 A No. I don't think I had to ask him.
- 19 Q Now the father was in the front looking back through
- 20 the back window, correct? At his ---
- 21 A (Interposing) At times, yes.
- 22 Q Okay.
- 23 At times?
- 24 A Yes.
- 25 Q Okay.

1 Did you make continuous eye contact with the  
2 father throughout this period of time?

3 A No.

4 Q Okay.

5 Was there some discussion about her medical  
6 condition, correct?

7 A Yes.

8 Q Okay.

9 And he told you or said in your presence that  
10 she had MRSA, correct?

11 A Yes.

12 Q Okay.

13 That she was taking an antibiotic for the MRSA,  
14 correct?

15 A No.

16 Q Never said that. Okay.

17 Umm --- now you said as you were approaching the  
18 hospital the child started posturing, correct?

19 A I believe in my report I said, 'The patient started  
20 moving extremities.'

21 Q Okay.

22 Does that mean posturing to you?

23 A At the --- what I documented --- what I documented is  
24 that the patient started moving.

25 A Does that mean posturing to you?

1 A No.

2 Q Okay.

3 What does posturing mean to you?

4 A Posturing means unpurposeful movements.

5 Q What is the pulse, the different pulse measurements  
6 that you have in your report?

7 A (No verbal response.)

8 Q You took them at three different times, correct?

9 A A hundred and eight (108), a hundred and three (103)  
10 and a hundred and nine (109).

11 Q All acceptable?

12 A Yes.

13 Q Okay.

14 So there's nothing indicated in here --- in  
15 there about seventy (70) beats per minute in your  
16 report, correct?

17 MS. POPE-STARNES: Objection. Asked  
18 and answered.

19 MR. WHITE: I asked ---

20 THE COURT: (Interposing) I'll allow  
21 it. I'll allow it.

22 MS. POPE-STARNES: He's already  
23 testified it wasn't in ---

24 THE COURT: (Interposing) Hang on.

25 MS. POPE-STARNES: (Continuing) his

1 report in response to that Your Honor.

2 THE COURT: Noted. Noted.

3 Q (By Mr. White, continuing) Nothing was written in  
4 your report about seventy (70) beats per minute?

5 A I could look through it again and see. I don't  
6 believe so.

7 Q Okay.

8 If you want to, go right ahead.

9 A No. It doesn't say anything about a heart rate of  
10 seventy (70).

11 Q And it doesn't say anything about the child being in  
12 extreme respiratory distress either does it?

13 MS. POPE-STARNES: Objection. Asked  
14 and answered.

15 MR. WHITE: The report Judge. I asked  
16 him about the report.

17 THE COURT: I think that you did ask  
18 him about what's in the report before.

19 MR. WHITE: Okay. My apologies Judge.

20 THE COURT: Sure.

21 Q (By Mr. White, continuing) Now you were interviewed  
22 by the police in this case, correct?

23 A Yes.

24 Q And isn't it true Mr. Calus, at all times that Mr.  
25 McBurney conducted himself as a concerned parent?



1 A I think it's a matter of opinion.

2 Q Well in your opinion?

3 A No.

4 Q So what did he do that says, that tells you at that  
5 time that he was not acting as a concerned parent?

6 A My mother said, 'If that would have happened she  
7 would have been hysterical.'

8 Q What did Mr. McBurney do that tells you on that  
9 night, November thirtieth (30th), two thousand six  
10 (2006), he was not acting as a concerned parent?

11 A I believe he was extremely calm.

12 Q Anything else?

13 A No.

14 Q Is that indicated in your report anywhere?

15 A It doesn't pertain to patient care.

16 THE COURT: Just 'Yes' or 'No'.

17 Q **(By Mr. White, continuing)** Is that indicated in  
18 your report?

19 A No.

20 Q Now you talked to these police officers haven't you?

21 A Yes.

22 Q About this case?

23 A Yes.

24 Q You talked to them about your testimony?

25 A About?

1 Q Your testimony.

2 A Yes.

3 Q Now you also visually inspected that child, examined  
4 her, correct?

5 A Yes.

6 Q And there's no sign of any trauma whatsoever, isn't  
7 that true?

8 A That's correct.

9 Q Okay.

10 MR. WHITE: Nothing further.

11 THE COURT: Ms. Pope-Starnes.

12 MR. WHITE: Actually I do. I'm going  
13 to mark an unmarked copy of that EMS report as  
14 Exhibit, I believe, Y and move for its entry.

15 MS. POPE-STARNES: I would ask for the  
16 Court to withhold a ruling on that. Typically the  
17 EMS reports are part of the medical records. And it  
18 would be cumulative if it is. Therefore we could  
19 check into it later.

20 If it is not, I don't have an objection.

21 THE COURT: Okay. Okay. Fair enough.

22 MR. WHITE: I don't believe that it is  
23 but if it is ---

24 THE COURT: (Interposing) Somebody  
25 make a note to remember to address that potential Y.

1 Good luck Barb.

2 Okay. Ms. Pope-Starnes.

3 MS. POPE-STARNES: Thank you.

4 **REDIRECT EXAMINATION**

5 **BY MS. POPE-STARNES:**

6 Q During umm --- the transport of Madison to the  
7 hospital was the Defendant volunteering information  
8 to you?

9 A I had to ask him for information.

10 Q Did the Defendant say anything spontaneously without  
11 you asking during the transport?

12 A I don't --- I don't think so.

13 Q What type of information do you put in your --- what  
14 do you call your report?

15 A Just an EMS report.

16 Q Okay.

17 What kind of information do you put in your EMS  
18 report?

19 A Things that pertained to what happened with the event  
20 starting from past illness to treatment given. Just  
21 mainly pertinent things that go directly towards the  
22 patient care. Talking about maybe being sick  
23 earlier in the day or not. Just things pertinent to  
24 what's going on right now.

25 Q And if a family member is with the patient in the

1 ambulance as you're transporting them, do you report  
2 on them in your EMS report?

3 A Do we document if they're there?

4 Q No.

5 Do you document about them? What they do?  
6 What they say?

7 A No.

8 Q Do you have an independent recollection about the  
9 Defendant and his demeanor during that transport?

10 A Yes.

11 Q Thank you.

12 MS. POPE-STARNES: I have no other  
13 questions, Your Honor.

14 THE COURT: Mr. White, anything further?

15 MR. WHITE: Nothing further Judge.

16 THE COURT: Thank you.

17 Sir, you're all set.

18 THE WITNESS: Thank you.

19 Do I get to go home?

20 THE COURT: Yeah. Is there any  
21 objection Counsel?

22 MS. POPE-STARNES: May he be excused,  
23 Your Honor?

24 MR. WHITE: No objection.

25 THE COURT: Well he asked to go home.

1 I don't know. Better check with your boss. Well  
2 you go home and Judge said, 'I could.' Thank you  
3 Sir.

4 Next witness.

5 MS. POPE-STARNES: Your Honor, the  
6 People would call Doctor Odetola to the stand.

7 THE COURT: Thank you.

8 Good morning. No up here. Sir, if you could  
9 come on up here please?

10 MS. POPE-STARNES: No. He's not the  
11 witness Your Honor.

12 THE COURT: Oh. Sorry.

13 Sir, please step up here, face my Clerk and  
14 raise your right hand.

15 THE CLERK: **Do you swear the testimony**  
16 **you are about to give will be the truth, so help you**  
17 **God?**

18 THE WITNESS: **Yes I do.**

19 THE COURT: Thank you. You can have a  
20 seat there.

21 THE WITNESS: Okay.

22 MS. POPE-STARNES: May I proceed Your  
23 Honor?

24 THE COURT: You may.

25 MS. POPE-STARNES: Thank you.

1 DOCTOR FOLAFOLUWA ODETOLA  
2 WAS THEREUPON CALLED AS A WITNESS HEREIN, AND AFTER  
3 HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE  
4 WHOLE TRUTH, AND NOTHING BUT THE TRUTH WAS EXAMINED  
5 AND TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. POPE-STARNES:

8 Q Sir, would you please state your name and spell your  
9 last name?

10 A My name is, excuse me, Folafoluwa, that's all right.  
11 The last name is spelled O D E T as in Tom O L A.

12 THE COURT REPORTER: What was the first  
13 name?

14 THE COURT: Do you want the first?

15 Q (By Ms. Pope-Starnes, continuing) Could you spell  
16 the first name please?

17 A F O L A F O L U W A.

18 Q Can you tell us please where you received your  
19 education?

20 A I was actually trained in quite a number of places.  
21 My medical school training was in Nigeria under the  
22 British system. And thereafter I trained in  
23 pediatrics in Children's Hospital in New Jersey.  
24 And then in pediatric intensive care at the  
25 University of Michigan. Thereafter I've also done

1 two different research fellowships at the University  
2 of North Carolina, Chapel Hill and the University of  
3 Michigan.

4 Q Now umm --- Doctor what year did you receive --- what  
5 year did you complete medical school?

6 A Nineteen-ninety-two (1992).

7 Q And where did you do your residency?

8 A Children's Hospital of New Jersey.

9 Q Okay.

10 And that was in pediatrics?

11 A Yes.

12 Q And when did you complete that program?

13 A Nineteen-ninety-eight (1998).

14 Q And then did you do a second residency or what was  
15 the program in intensive care?

16 A So the program in intensive care is a fellowship.  
17 So it's --- it's a part of graduate medical training.  
18 So beyond pediatric residency training I then did  
19 pediatric intensive care training at the University -  
20 --

21 Q (Interposing) When did you complete your  
22 fellowship?

23 A Two thousand and one (2001).

24 Q And Doctor are you licensed to practice medicine?

25 A Yes I am.

1 Q And where do you hold licenses?

2 A Uh --- the Country of Nigeria, the State of North  
3 Carolina and the State of Michigan.

4 Q Do you hold any board certifications?

5 A Yes I do.

6 Q In what areas?

7 A Pediatrics, nineteen-ninety-eight (1998), pediatric  
8 critical care medicine, two thousand and two (2002).

9 MR. WHITE: I'm sorry. What was the  
10 second?

11 THE COURT: The second? The second  
12 one.

13 THE WITNESS: Pediatric critical care  
14 medicine or ---

15 Q **(By Ms. Pope-Starnes, continuing)** (Interposing)  
16 Pediatric intensive care.

17 A (Continuing) pediatric intensive care.

18 Q Following the completion of your fellowship what type  
19 of work did you do?

20 A Umm --- so I finished my fellowship in two thousand  
21 and one (2001) at the University of Michigan. And  
22 thereafter went to the University of North Carolina,  
23 Chapel Hill for a research fellowship in health  
24 services research and research methodology. At the  
25 same time I was also an attending physician at the



1 University of North Carolina Hospitals. And that  
2 was between two thousand and one (2001) and two  
3 thousand and three (2003).

4 Q And when you were working at University of North  
5 Carolina as an attending physician did you have any  
6 other specialty?

7 A Pediatric intensive care.

8 Q Following that program you came to the University of  
9 Michigan?

10 A Yes I did.

11 Q And what is your work that you do at the University  
12 of Michigan?

13 A So I --- I'm actually an attending physician at the  
14 University of Michigan pediatric ICU. Umm --- I  
15 also research for the child health organization and  
16 research unit within the University of Michigan.

17 Q Have you ever testified before, Doctor Odetola?

18 A Yes I have.

19 Q In what Courts, if you can recall?

20 A Specifically in two thousand and --- I'm trying to  
21 keep it exact, a period. It was two thousand and  
22 three (2003) I think it was. Wayne County.

23 Q And at the time were you qualified as an expert?

24 A Yes.

25 MS. POPE-STARNES: Your Honor, I would

1 ask that this witness be qualified as an expert in  
2 pediatrics and as a pediatric intensivist.

3 THE COURT: Mr. White.

4 MR. WHITE: Just if I could ask some  
5 questions?

6 THE COURT: You may.

7 **VOIR DIRE**

8 **BY MR. WHITE:**

9 **Q** What was your qualification in two thousand three  
10 (2003) in Wayne County?

11 **A** In terms of that I was a pediatric intensivist so I  
12 practiced pediatric intensive care.

13 **Q** Was that how you were qualified?

14 **A** Yes.

15 **Q** Okay.

16 MR. WHITE: I have no objection.

17 THE COURT: So qualified.

18 **DIRECT EXAMINATION CONTINUED**

19 **BY MS. POPE-STARNES:**

20 **Q** Now Doctor can you explain to the Jury what does an  
21 attending physician for an pediatric intensive care  
22 unit do?

23 **A** Umm --- your duty as an attending physician is to be  
24 the head of a team that provides care to critically  
25 ill children within a pediatric ICU setting. That

1 involves coordinating care and delivering care to  
 2 children within the ICU. The team involves or  
 3 includes resident trainees, fellows in pediatric  
 4 intensive care training, uh --- critical care  
 5 pharmacists, respiratory therapists, nurses and  
 6 families.

7 Q Doctor Odetola if I can direct your attention back to  
 8 December first of two thousand and six (2006), did  
 9 you see a patient or a child by the name of Madison  
 10 McBurney in your pediatric intensive care unit?

11 A Yes I did.

12 Q When was the first time that you encountered Madison  
 13 that day?

14 A To be specific, probably about seven-thirty (7:30)  
 15 that morning.

16 Q And can you tell the Jury please what, if anything,  
 17 you observed?

18 A Umm --- so once I get to the ICU in the morning I  
 19 essentially go through and uh --- figure out which  
 20 patients just came into the ICU. And I learned she  
 21 had actually been admitted overnight into the ICU.  
 22 And the next step is then to evaluate the care that  
 23 had been provided and to move things ahead.

24 Q Did you do that in Madison's case?

25 A Yes I did.

1 Q And when you evaluate the care that she was provided  
2 what does that mean that you do?

3 A Essentially it involves a complete review. And I  
4 believe strongly that it all starts at the bedside.  
5 So the child has to be evaluated in terms of physical  
6 examination. Umm --- thereafter we then look at  
7 what the care is that has been provided. This would  
8 involve the --- all the laboratory work that has been  
9 done at that time. Umm --- what the findings were.  
10 Treatments that have been offered in terms of both  
11 the laboratory investigations tied into what  
12 medications the child would be on. Specifically in  
13 Madison's case that was done. And also what kinds  
14 of nutrition were we providing and what were our next  
15 steps in this --- in her care.

16 Q Can you tell us please at that point what, if any ---  
17 the physical examination of Madison what, if  
18 anything, you observed?

19 A And umm --- I can remember clearly she was in a crib  
20 which is where we put infants. She was intubated  
21 and sedated. And intubated essentially means that  
22 you have a piece of plastic tubing sitting in the  
23 airpipe. Now this was connected to a ventilator or  
24 a breathing machine. Umm --- the findings that were  
25 pertinent in terms of what I saw at that point

1 included the fact that umm --- she wasn't moving.  
2 She umm --- had going through the different systems,  
3 pupils were reactive which is part of our  
4 neurological exam. We would also look at other  
5 parts of the exam including was she able to actually  
6 react to touch. And in her instance she was  
7 actually able to move to my touch, both her hands,  
8 arms and her lower extremities.

9 Q So as I understand you said, 'She wasn't moving on  
10 her own but she did react to touch'?

11 A Yes.

12 Q Okay.

13 What if anything else did you observe?

14 A Umm --- the other parts of the exam included  
15 listening to the heart and uh --- checking her  
16 pulses. Also listening to her lung sounds. And  
17 these were at that point, all normal. Then checked  
18 the abdomen. Sort of a head to toe kind of  
19 approach. Umm --- no significant findings,  
20 abnormal findings were elicited at that point. Umm  
21 --- and examination of the skin is also done to just  
22 make sure there aren't lesions or rashes or ---

23 Q (Interposing) Did you observe anything?

24 A No.

25 Q What did you do next in the course of treatment of

1 Madison?

2 A Umm --- at that point in time I reviewed the scans,  
3 essentially the head CT scan that had been done  
4 overnight. And umm --- per the radiologist there  
5 were certain findings that were of concern at that  
6 point in time that might guide her therapy. What  
7 they reported and what I also saw on the CT scan was  
8 evidence of umm --- blood collection in what is known  
9 as the subdural space between the brain and the  
10 skull, predominantly on the left side of the --- of  
11 the brain. Umm --- that in itself was concerning to  
12 me because the next question I had in my mind was if  
13 you have blood collection within that space it means  
14 something. And we then have to then go to the next  
15 step of trying to figure out what that might be.

16 And the truth of it is the collection of blood  
17 in that space means there is some breach of  
18 structure. Essentially you expect blood to stay  
19 within the blood vessels. And if for some reason  
20 the blood isn't there and has leaked out between the  
21 brain and the skull, we need to figure out why.

22 Q At that point did you have one specific diagnosis for  
23 Madison?

24 A Umm --- there's a prioritization in terms of  
25 diagnosis. The ---

1 Q (Interposing) I'm sorry. What?

2 A There is a prioritization in terms of ---

3 Q (Interposing) Prior, okay.

4 A (Continuing) diagnosis when the child is critically  
5 ill. The first thing that actually screams at one  
6 as a pediatrician and also as a pediatric intensivist  
7 is the idea of infection, infection, infection. So  
8 what we do is we take that as our number one, sort of  
9 concern. And then step beyond that. So when she  
10 came in she was put on antibiotics. And along with  
11 that was also an antiviral agent just in case if, you  
12 know, this was some kind of viral infections. So  
13 she was already on three different agents at that  
14 point.

15 Q The point that you saw her first thing Tuesday,  
16 excuse me, Friday morning?

17 A Yes. Umm --- which is what we would normally do, to  
18 treat for infection to start off.

19 MR. WHITE: I just Your Honor I just, so  
20 I don't interrupt the doctor continually, I just ask  
21 that he testify from his own perspective not we.

22 MS. POPE-STARNES: I believe that he has  
23 been.

24 THE COURT: If ever there's an occasion  
25 where you're going to say, 'We', just say, 'I', okay.

1 I don't know if that happened or not.

2 Go ahead Counselor.

3 Q (By Ms. Pope-Starnes, continuing) Doctor I believe  
4 you testified she had already been placed on a series  
5 of antibiotics and an antiviral agent?

6 A That's right.

7 Q What is a --- what is a differential diagnosis?

8 A In this instance the way I see this and the way I  
9 actually look at conditions of this nature is if you  
10 have that blood collection there, there has to have  
11 been something that led to it and one has to figure  
12 out what that is. And so the next step in terms of  
13 my prioritization was infection and then trauma to  
14 the brain. Both especially because of the  
15 collection between the brain and the skull.

16 And the way we --- I proceeded to take care of  
17 her was to insure that certain things were done. So  
18 once you have that blood collection you need to  
19 figure out well, if there's injury to the brain then  
20 we need to make sure certain things are done. So  
21 what we did in her instance ---

22 MR. WHITE: (Interposing) Objection.

23 I just asked he speak from I.

24 MS. POPE-STARNES: If I may ask another  
25 question Your Honor?



1 THE COURT: Go ahead Counsel.

2 Q (By Ms. Pope-Starnes, continuing) As the attending  
3 physician are you directing other people to do things  
4 for Madison's treatment?

5 A Yes.

6 Q And as the attending physician was it your  
7 responsibility and decision what treatment was to  
8 happen next?

9 A Yes.

10 Q Did you make a decision?

11 A Yes.

12 Q Did you instruct other people to follow through with  
13 that treatment?

14 A Yes.

15 Q When you had this list of your priorities of possible  
16 infection or possibly trauma to the brain, what  
17 treatment did you order at that point?

18 A So umm --- in terms of the bedside care we  
19 essentially made sure certain things were done.  
20 Essentially we wanted the head in the midline. We  
21 wanted the head of the bed elevated at a certain  
22 degree. Umm --- and that was ---

23 Q (Interposing) What does it mean, you want the head  
24 at the midline?

25 A So essentially because the truth of it is, blood

1 flows into the brain and flows out. You want  
2 drainage of blood away from the brain. So by  
3 keeping the head at the midline you insure there  
4 isn't any kinking of the blood vessels that lead up  
5 from the brain. And that was being done even as of  
6 the time I saw her. The elevation of the head of  
7 the bed thirty (30) degrees also insures drainage of  
8 blood away from the head.

9 Q Did you prescribe medications to try and deal with  
10 this issue besides the antibiotics and the antiviral  
11 agent?

12 A Yes. Prior to my seeing her she had been placed on  
13 a medication called Phenobarbital for concerns of  
14 seizure activity prior to presenting to the pediatric  
15 intensive care unit. Umm --- in this kind of  
16 situation in which we were worried about injury to  
17 the brain ---

18 MR. WHITE: (Interposing) Objection as  
19 to we Judge. This is he's --- he's using 'We were  
20 worried.' Now this is someone else is involved  
21 here.

22 THE COURT: Understood.

23 Sustained.

24 Just when you're talking about what's going on  
25 inside someone's head, no pun intended, pertaining to

1           this case, what's going on in your mind, just I,  
2           okay, instead of we.

3                   Go ahead.    You can continue.

4   **Q       (By Ms. Pope-Starnes, continuing)**   Go ahead Doctor.

5   **A**       So in my concern for injury to the brain, we  
6           continued the medication for seizure control which in  
7           itself would help us control any pressure within the  
8           brain.   The next step to guide us was to actually  
9           consult a number of specialists.   So we had a  
10          neurology staff consulted.   Neurosurgery was also on  
11          consult.   Ophthalmology was consulted.   And we also  
12          wanted to make sure prior to getting into the ICU if  
13          any other services had been consulted or not.   So  
14          essentially trying to streamline her care.

15                Thereafter we umm --- discuss her care on rounds  
16           which is essentially patient care rounds to insure  
17           that no stones are left unturned.   And listen to her  
18           consultants in terms of what they needed to add to  
19           her overall care.

20   **Q**       After you met on rounds and listened to the  
21           consultants what did you decide was to be done next?

22   **A**       The decision was made to have an intracranial  
23           pressure monitor inserted.

24   **Q**       Can you tell the Jury what is an intracranial  
25           pressure monitor is?

1 A An intracranial pressure monitor is essentially a  
2 device that measures pressure within the brain. And  
3 it helps guide therapy because it actually serves as  
4 a window to the brain itself. That if there's any  
5 evidence of injury and elevation of pressure, we will  
6 then, excuse me correction, I will then be able to  
7 treat such elevation in pressure.

8 Q Now was there a placement of an intracranial pressure  
9 monitor done with Madison?

10 A Yes it was done.

11 Q And was that something that you did or that one of  
12 your specialists did?

13 A One of our specialists did it.

14 Q Were there any procedures on December first, of two  
15 thousand and six (2006) that you performed on  
16 Madison?

17 A Yes.

18 Q What was that?

19 A It was a placement of a central venous catheter.

20 Q What is that?

21 A That is a vascular access device that is placed in  
22 one of the large veins of the body to cover a number  
23 of functions. It gives us an idea of the pressure  
24 within the blood vessels, the veins particularly.  
25 It also provides the ability to administer

1 medications, do frequent blood sampling as needed and  
2 also gives us the opportunity to give medications to  
3 support blood pressure if needed.

4 Q After the intracranial pressure monitor was placed  
5 and the venous catheter, did you evaluate Madison  
6 after that?

7 A Yes.

8 Q Can you tell the Jury what you found at that point?

9 A Umm --- this was --- the procedure itself was done  
10 the evening of the first. And at that point in  
11 terms of her physical examination the pupils were  
12 still reactive in terms of her neurological exam.  
13 She still had some reaction to touch, sort of deep  
14 touch in this instance. Umm --- and the rest of the  
15 physical examination was essentially as we found  
16 earlier in the morning of the first.

17 Q When was the first time that you were able to use the  
18 intracranial pressure monitor to know what her  
19 pressures were? Was it on the first or on the ---

20 A (Interposing) On the first.

21 Q Okay.

22 And what kind of pressures was she having at  
23 that point?

24 A The --- the initial pressure measured was greater  
25 than twenty (20).

1 Q Greater than twenty (20)?

2 A Yes.

3 Q Can you tell the Jury for a child Madison's age, what  
4 is the normal pressure?

5 A For infants it's been documented that the pressure  
6 should be less than ten in a normal healthy infant.

7 Q So when you find that her intracranial pressure is  
8 over twenty (20) are you concerned at that point?

9 A Yes.

10 Q And what does that mean to you that's going on in the  
11 head?

12 A What was obvious to me was that there was elevation -  
13 -- elevated intracranial pressure. The skull itself  
14 is a thick structure. There are three different ---  
15 three different structures within the skull. So we  
16 have a brain, we have blood, and we have spinal  
17 fluid. And under the most circumstances if  
18 everything is well they all interact and there isn't  
19 any problem. If there's any perturbation, for  
20 example if the brain is swollen, it then competes for  
21 space with spinal fluid and blood. The same goes  
22 for the other structures. But the truth of it is  
23 the swelling of the brain mechanically actually, can  
24 actually cut off blood supply to the brain and also  
25 the spinal fluid, just mechanically.

1           So once I saw the pressure being more than  
2           twenty (20) and to be more specific, by the time she  
3           actually got up to the ICU from the operating room,  
4           the pressures were actually close to fifty (50). So  
5           essentially ---

6   Q       (Interposing) Let me stop you there Doctor.

7   A       Yes.

8   Q       How much time elapsed between it was the time in the  
9           operating room where the procedure was done, where it  
10          was in the twenties (20's) and the time she got to  
11          her room where it was, I'm sorry, you said, 'It was  
12          fifty (50) to sixty (60)'? Is that what you said?

13   A       In terms of the pressure itself it was about fifty  
14          (50) when she got up to the ICU.

15   Q       Well how much time had passed?

16   A       Umm --- the trip itself from the operating room to  
17          the ICU would on the average be anywhere from ten to  
18          fifteen (15) minutes at most. Umm --- oftentimes  
19          once the procedure is done and the patient is done  
20          with the procedure, you essentially bring them up  
21          straight to the ICU. So we measured the pressures  
22          by essentially connecting the device to a pressure-  
23          measuring device and can actually read it on the  
24          monitor. The device also makes it possible for us  
25          to have continuous monitoring of this pressure. Umm

1 --- yes, go ahead.

2 Q Doctor Odetola, if you'd tell the Jury when she  
3 returned to the ICU and you found that her pressures  
4 were in the fifties (50's) and sixties (60's), what  
5 treatment did you do at that time?

6 A We continued all the treatments that we had been  
7 providing her. Umm --- the other medication I added  
8 to the mix here, she'd actually received a dose of  
9 that earlier in the day was three percent (3%)  
10 saline.

11 Q What does three percent (3%) saline do?

12 A Three percent (3%) saline essentially helps us as an  
13 adjunct to try to reduce elevated pressure within the  
14 head.

15 Q Was that --- did you have any success with that?

16 A We did not.

17 Q Were there any other medications or procedures that  
18 you attempted to try to reduce that pressure to the  
19 brain?

20 A The --- the medications she was on were essentially  
21 continued and titrated.

22 Q What does titrated mean for those of us who aren't  
23 doctors?

24 A Titration essentially means you try to fine tune the  
25 dose of medication's effect. And once you have



1 elevated pressures within the skull you try to  
2 actually keep things quiet. What I mean by that is  
3 the brain doesn't see anymore perturbation. So the  
4 things we did in this instance was to make sure that  
5 she was well sedated. She wasn't agitated in  
6 anyway. That we did not have a seizure, correction,  
7 that there was no seizure activity. That she did  
8 not have a fever and that her blood pressure was  
9 adequate.

10 Q And was there any seizure activity?

11 A No.

12 Q Did she have a fever?

13 A No.

14 Q And was her blood pressure adequate?

15 A Yes.

16 Q Did there come a point when you considered other  
17 procedures for Madison?

18 A Yes.

19 Q What other procedure did you consider?

20 A We --- we --- had to start a blood pressure medicine  
21 at a point called Epinephrine.

22 Q Why did you have to do that?

23 A The reason was as time progressed on the first going  
24 into the second of December, there was sustained in  
25 this region the pressure within the head. And for

1 us to be able to be reassured that we were providing  
2 blood flow to the brain, we had to keep the blood  
3 pressure at normal or slightly higher. Because then  
4 we were competing with severely elevated pressure  
5 within the head. And this number is known as the  
6 cerebral perfusion pressure. Umm --- to --- to  
7 essentially make sure that we were getting blood flow  
8 to the brain. So we started that.

9 Q And when approximately was the start of that?

10 A I can't give you an exact time but it was probably  
11 the earlier of the second. Sometime in the earlier  
12 of the second.

13 Q Were there any other procedures that you considered  
14 at that point?

15 A Yes. Yes.

16 Q What was that?

17 A Decompressive craniectomy.

18 Q What is that?

19 A Decompressive craniectomy is essentially removal of a  
20 bone flap from the skull to allow expansion of a  
21 swollen brain to continue.

22 Q And uh --- did you have discussion with the parents  
23 about that procedure?

24 A Yes.

25 Q And did the parents make a decision as to whether or

1 not that procedure should be done?

2 A Umm --- yes they did.

3 Q And what was the decision.

4 MR. WHITE: I ask that he designate as  
5 to the parent.

6 THE COURT: Okay.

7 MS. POPE-STARNES: May we approach  
8 please?

9 THE COURT: Go ahead. You can  
10 approach.  
11 (Whereupon a discussion was held at the Bench out of  
12 hearing of the Jury and the Court Reporter.)

13 \* \* \*

14 Q **(By Ms. Pope-Starnes, continuing)** Who was present  
15 when you spoke to them?

16 A The neurosurgeon.

17 Q And was the mother present?

18 A Yes.

19 Q Was the father present?

20 A Yes.

21 Q Okay.

22 Did the mother tell you whether or not she  
23 wanted the craniectomy done?

24 A Specifically I can't recall that.

25 Q Do you recall whether or not they were in agreement

1 about the decision?

2 A No. I can't speak to that.

3 Q Were you ever requested to do a craniectomy?

4 A No.

5 Q Was one done?

6 A No.

7 Q At that point Doctor Odetola, did you recommend that  
8 procedure for Madison?

9 A Yes.

10 Q Why?

11 A We had, correction, clinically it was evident at the  
12 bedside that the --- the elevated pressure within the  
13 head was not responding to medical therapy. In that  
14 instance the options that I had at that point were to  
15 continue all the medical treatment that we were  
16 offering or also to include decompressive craniectomy  
17 as essentially a last ditch effort to control the  
18 elevated pressure in the head.

19 Q Now have you treated patients in the intensive care  
20 unit or children that have had a craniectomy done?

21 A Yes.

22 Q Is doing a craniectomy a guarantee that this will  
23 reduce the pressure and that the child will survive?

24 A No.

25 Q Are there risks to the craniectomy?

1 A Yes there are.

2 Q What are the risks?

3 A A trip to the operating room in a child who is  
4 already on a blood pressure supportive medication,  
5 the risk of bleeding. Anesthetic risks would be  
6 considered in this kind of decision.

7 Q At that point when the craniectomy was discussed, did  
8 you already have concerns that there would have been  
9 permanent brain damage to Madison?

10 A Yes.

11 Q Why?

12 A Progressive of the time from the first until the  
13 third umm --- was a series of clinical findings at  
14 the bedside. And as a clinician essentially rely a  
15 lot on whatever is seen at the bedside. And in her  
16 treatment with all the different medications that we  
17 were giving her, apart from all the technology at the  
18 bedside, including the breathing machine and all the  
19 medications we were giving to control this pressure  
20 within the head, we were not successful.

21 Correction, I wasn't successful in correcting or  
22 reducing the elevated pressure within her brain.

23 I also had to then consider the findings on  
24 repeat images of her brain.

25 Q What type of images?

1 A So she had, coming in she had had a CT scan of the  
2 head done. She also had an MRI of the brain done.  
3 And a follow-up CT scan done on the second. So we  
4 at least had three different sets of images. And  
5 what was really concerning to me apart from what I  
6 could elicit at the bedside was the extent of injury  
7 on the imaging of the brain.

8 Going also through the second of December into  
9 the third, I also saw evidence of loss of some of the  
10 findings that I had on the first.

11 Q Which findings are those?

12 A So I --- I noticed on clinical exam that certain  
13 reflexes were no longer being observed on her  
14 neurological exam. And when I see that, I  
15 specifically mean umm --- what are known as brain  
16 stem reflexes. So at the bedside we try to elicit  
17 certain findings in her. We try to find what is  
18 known as a corneal reflex. We essentially stimulate  
19 the cornea of the eye umm --- to see if we can  
20 actually get twitching of the eyelids. By the  
21 third, I could not elicit that on the left side. I  
22 could get it on the right side partially.

23 I also had gone from an exam on the first where  
24 she actually had her react to touch on her  
25 extremities to one in which I essentially could not

1           elicit that on the third, late on the third.

2   Q       So there was no response on the third?

3   A       No.     Putting that in context with all the other  
4           essentially intensive therapies that we were offering  
5           was really worrisome to me.

6   Q       If a craniectomy had been done and her life had been  
7           preserved ---

8                   MR. WHITE:     (Interposing)     Your Honor,  
9           just ---

10                   THE COURT:     (Interposing)     Just let her  
11           --- let her finish the question.

12                   Hold on, on an answer.

13                   Go ahead Counsel.

14   Q       **(By Ms. Pope-Starnes, continuing)**     If a craniectomy  
15           had been done and you'd been able to maintain her  
16           life, would you have been able to guarantee that  
17           there wasn't any permanent brain damage?

18                   THE COURT:     Hold on Doctor.

19                   MR. WHITE:     My objection is it's  
20           speculative.    The form of the question is improper  
21           because it suggests an answer that is not --- it's  
22           not something that he's testified to so it's leading.  
23           So the form of the question is improper too.   Its  
24           asking him to speculate and asking him to comment  
25           about a fact not in evidence.

1 MS. POPE-STARNES: He has been qualified  
2 as an expert which under the rules of evidence allows  
3 him to give his opinion as an expert witness Your  
4 Honor.

5 THE COURT: A couple more foundational  
6 questions and then I'll respectfully --- well let me  
7 hear the --- sustain at this time. You can ask some  
8 foundational questions about whether or not he has  
9 the training to be able to answer that question.

10 Q (By Ms. Pope-Starnes, continuing) Doctor have you  
11 treated patients before who have had craniectomies?

12 A Yes.

13 Q And in the course of doing that have you seen the  
14 results of those craniectomies?

15 A Yes.

16 Q Have you had patients who have passed away after  
17 having a craniectomy?

18 A Yes.

19 Q Have you had patients who have lived after having a  
20 craniectomy?

21 A Yes.

22 Q And have you been able to observe from the patients  
23 that lived whether or not any of them suffered  
24 permanent brain damage?

25 A Yes.



1 Q In Madison's case do you have an opinion about  
2 whether or not she would have still suffered  
3 permanent --- whether she would have suffered  
4 permanent brain damage if a crainiec --- craniectomy  
5 had been performed?

6 MR. WHITE: I believe that's been asked  
7 and answered Judge.

8 THE COURT: I'll allow it.

9 THE WITNESS: My opinion on that based  
10 on the severity of the brain injury was that there  
11 would be long-lasting, essentially long-lasting  
12 sequelae from the injury.

13 Q **(By Ms. Pope-Starnes, continuing)** Sequelae?

14 A Yes.

15 Q What does that mean?

16 A Essentially after effects from that injury.

17 Q Now Doctor Odetola umm --- after there was a decision  
18 not to do the craniectomy were there any other  
19 procedures that you were able to do?

20 A No.

21 Q And did there come a point when Madison passed away?

22 A Yes.

23 Q When was that?

24 A That was on the fourth of December, two thousand and  
25 six (2006).

1 Q Now you began in your testimony talking about the  
2 priorities, infection, trauma to the brain. Were  
3 you able to rule out infection?

4 A Yes.

5 Q How were you able to do that?

6 A On --- on insertion of the intracranial pressure  
7 device, the neurosurgeons actually took samples of  
8 spinal, cerebral spinal fluid. And this was tested  
9 essentially for viruses and bacteria. And this came  
10 back negative for those. Umm --- we also did not  
11 have any bacteria growing in other body fluids like  
12 urine or blood.

13 Q The testing that you had done, well let me ask you  
14 this.

15 Are you familiar with something called MRSA?

16 A Yes.

17 Q Okay.

18 The testing that you had done and the testing  
19 that was done from the cerebral spinal fluid, the  
20 urine and her blood, would any of that testing have  
21 indicated whether or not Madison was suffering from  
22 MRSA?

23 A Yes.

24 Q And did any of it indicate that she was suffering  
25 from MRSA?

1 A No.

2 Q Did you have ultimately after doing the tests and  
3 treating Madison and consulting with specialists, did  
4 you also come to a conclusion as to your diagnosis in  
5 regards to Madison?

6 A Yes.

7 Q What was that?

8 A Severe brain injury of a nonaccidental nature.

9 MS. POPE-STARNES: May I have just one  
10 moment Your Honor?

11 THE COURT: You may.

12 (Whereupon a brief delay was had.)

13 \* \* \*

14 MS. POPE-STARNES: Thank you. I have  
15 no other questions.

16 THE COURT: Mr. White.

17 **CROSS-EXAMINATION**

18 **BY MR. WHITE:**

19 Q Doctor, my name is Robert White.

20 What is hypertension?

21 A Hypertension is elevated blood pressure.

22 Q And what can happen with hypertension? What  
23 happened with, specifically, did Madison have  
24 hypertension?

25 A No.

1 Q Is there a difference between hypertension and  
2 hypertensive?

3 A Hypertensive essentially describes the existence of  
4 hypertension.

5 Q So I'm looking at your notes and it says, 'Patient is  
6 also hypertensive.'

7 Do you recall that?

8 A Hypertensive. I just as a part of clarification ---

9 Q (Interposing) I'm asking do you recall that?

10 MS. POPE-STARNES: Well I'm going to  
11 object. It's a mischaracterization. I'd ask that  
12 he be allowed to look at his notes.

13 THE COURT: Mr. White. Go ahead.  
14 What?

15 MR. WHITE: It's not a  
16 mischaracterization. He hasn't asked to look at his  
17 notes. I asked him if she was hypertensive,  
18 hypertension. He said, 'No.' Hypertensive is just  
19 another term. I said, 'I'm looking at his notes and  
20 it says, 'Peso (sic) --- patient is also  
21 hypertensive.'

22 THE COURT: What's the question?

23 Q (By Mr. White, continuing) My question is umm ---  
24 is that what your note says? Want to look at it?

25 A If you don't mind my asking, what date was that?

1 Q The way I read it Doctor it looks like it's twelve  
2 two (12/2).

3 A Twelve two (12/2).

4 Q I'm having a little difficult time reading your notes  
5 from twelve one (12/1) and twelve two (12/2).

6 A Okay.

7 Q Do you remember? Does this refresh your  
8 recollection?

9 A I took care of her for a period of three days. And  
10 during that period I would do several examinations.

11 Q My question is, 'Does this refresh your  
12 recollection?'

13 THE COURT: Well ---

14 Q **(By Mr. White, continuing)** (Interposing) Do you  
15 want to look at your notes?

16 A Yes.

17 Q Okay.

18 Did you bring any of them today?

19 A Yes. Excuse me. Thank you.

20 MS. POPE-STARNES: While the Doctor is  
21 looking Your Honor, I'm going to object to the  
22 foundation of the question. The Doctor has  
23 testified over a period of days. He's testified  
24 about different things at different times. And  
25 there's no foundation as to when he is talking about.

1 So I object to the form of the question and its  
2 having an improper foundation.

3 THE COURT: The question is, 'Whether or  
4 not the word hypertensive is contained in any of his  
5 reports', Mr. White? Or is that a misstatement of  
6 what the question was?

7 MR. WHITE: Well my question was, 'Was  
8 she hyperten --- did she have hypertension.'

9 THE COURT: Well ---

10 MR. WHITE: (Interposing) Is  
11 hypertension the same thing ---

12 THE COURT: (Interposing) Then let's  
13 start fresh because I thought that you were asking  
14 whether a word is contained in the document. So let  
15 me --- let's start fresh. Ask --- ask a question.

16 MR. WHITE: Of you or him?

17 THE COURT: No. Of him and then I'll  
18 decide if it's objectionable or not.

19 MR. WHITE: Okay.

20 I want to give him a chance to review his notes.

21 THE COURT: Okay.

22 Go ahead. Continue.

23 **Q (By Mr. White, continuing)** Doctor have you had a  
24 chance to review your notes?

25 **A** Yes I have.

1 Q And how many entries do you have in your notes  
2 regarding Madison?

3 How many different entries?

4 A Starting from the first, three.

5 Q And if I'm correct, it's one on December first and  
6 two on December second?

7 A The --- no, that's not correct. The second there  
8 was a note timed six-forty-five am (6:45am). And  
9 the second note on the second that I signed off at  
10 six o' three pm (6:03pm). There's a third note.  
11 This was on the third of December that I signed off  
12 at seven-thirty-eight pm (7:38pm).

13 Q So there's nothing on December first then?

14 A No.

15 Q Maybe I misunderstood your testimony but did you not  
16 see her on the first?

17 A Yes. The --- yes, I did.

18 Q Okay.

19 So she was admitted the evening prior, November  
20 thirtieth (30th)?

21 A Mm-hmm.

22 Q And you saw her in the morning on your normal shift?

23 A Yes.

24 Q On December first, but you didn't make any entries in  
25 your notes until December second?

1 A That's right.

2 Q Okay.

3 Now after looking at your notes regarding your  
4 entries now my question was, 'Was Madison  
5 hypertensive.'

6 THE COURT: Go ahead.

7 MS. POPE-STARNES: Objection.

8 Foundation as to when.

9 Q (By Mr. White, continuing) At anytime that you saw  
10 her.

11 A Yes. Can I go on?

12 Q Well I guess that answered my question.

13 In fact you made several findings of  
14 hypertension with Madison, correct?

15 A There's a note on the second.

16 Q There's one that says, 'Over the past sixteen (16)  
17 hours Madison has has --- Madison has had sustained',  
18 I'm reading it just the way it is, 'Has had sustained  
19 severe medically dash refractory intracranial  
20 hypertension.'

21 Did you find that?

22 A Mm-hmm.

23 Q That's your statement, correct?

24 A Yes.

25 Q Okay.



1           And then also a December second note that says  
2           after the entries regarding the ICP being greater  
3           than twenty (20), 'And patient was also  
4           hypertensive', correct?

5   A       Yes.

6   Q       And hypertension responded to Fentanyl and Ativan,  
7           correct?

8   A       Yes.

9   Q       Now what was happening to her was her brain was  
10          swelling, correct?

11   A       Yes.

12   Q       Cutting off blood.   It's a vicious cycle at this  
13          point, is it not?

14   A       Could be.

15   Q       Could be.

16           The pressure is mounting because the brain is  
17          swelling, pushing against the skull?

18   A       That's right.

19   Q       This intracranial pressure that you were unable to  
20          reduce in any significant degree?

21   A       That's right.

22   Q       In fact, by the time you put the ICP in when it was  
23          greater than twenty (20), by the time you get her  
24          back up to the room, or she was back I should say  
25          more appropriately, it had more than doubled,

1 correct?

2 A Yes.

3 Q Okay.

4 What is happening when the pressure is elevating  
5 from a critical level to almost double? What's  
6 happening Doctor in Madison's brain?

7 A I would --- I would sort of have to speculate on  
8 that.

9 Q Well medically from your perspective Doctor.

10 A Medically it means that the brain is swelling  
11 significantly.

12 Q The brain is swelling?

13 A Yes.

14 Q The brain is swelling and it's becoming more and more  
15 critical?

16 A Yes.

17 Q Isn't that a true statement?

18 A Yes.

19 Q Now you said you discussed a craniectomy with the  
20 parents, right?

21 A Yes.

22 Q You recommended the procedure, correct?

23 A In consult with the neurosurgeon.

24 Q And someone said, but you can't remember who, that it  
25 was not a good idea. They did not approve. One of

1 the parents, correct?

2 A Yes.

3 Q Okay.

4 And no steps were taken to try to do anything  
5 further regarding performing a craniec ---  
6 craniectomy on the child, correct?

7 A On the second of December I actually documented that  
8 there were two medians. The neurosurgeon and me  
9 being present discussing that option of decompressing  
10 the brain.

11 Q So you discussed it with the parents two separate  
12 times?

13 A Yes.

14 Q Okay.

15 And is it your testimony on both occasions one  
16 or both of the parents declined a craniectomy?

17 A Yes.

18 Q Okay.

19 Now Doctor, being in pediatric intensive care  
20 and working with critically ill children, uh --- you  
21 have to consult with parents on a regular basis,  
22 correct?

23 A Yes.

24 Q And uh --- if you disagree with a parent's decision  
25 that's not the end of the inquiry is it?

1 A Every single case is taken individually.

2 Q Okay.

3 But there's another step that you could take if  
4 you firmly believe that surgical intervention or  
5 another medical procedure should be undertaken,  
6 correct?

7 A Yes.

8 Q And that's to turn it over to your legal department,  
9 correct?

10 A In some cases.

11 Q To get --- to actually file proceedings to get a  
12 Court order to compel this type of proceeding, this  
13 surgery, correct?

14 A Yes.

15 Q That's available to you?

16 A Yes.

17 Q Okay.

18 And this was not done in this case, was it?

19 A No.

20 Q Now when you talked --- when you answered the  
21 Prosecutor's question about when Madison passed away,  
22 you said, 'December fourth', correct?

23 A That's right.

24 Q Now Madison didn't pass away naturally did she?

25 A I wasn't --- I wasn't present then.

1 Q He wasn't present.

2 But your records show that life support was  
3 withdrawn, isn't that true?

4 A In the records, yes.

5 Q Okay.

6 And mother authorized a withdrawal of life  
7 support, isn't that true?

8 A As per the records, yes.

9 Q Okay.

10 Now you did a physical exam of Madison true?

11 A I'm sorry. I didn't hear.

12 Q I'm sorry. I'm sorry.

13 You did a physical examination of ---

14 A (Interposing) Several.

15 Q (Continuing) Madison?

16 Okay.

17 As far as examining her body, you found nothing  
18 unusual, isn't that a true statement?

19 A No, it's not.

20 Q You did find something unusual in examining her body?

21 A Over time, yes.

22 Q What did you find?

23 A So the exam, the initial exam, did not show any  
24 abnormalities. Essentially the findings ---

25 Q (Interposing) I'm sorry. Did not show any what?

1 A Any abnormalities. The initial exam I did on the  
2 morning of the first. There were several exams done  
3 essentially to gauge response to therapy.  
4 Essentially to all the treatments that we had given  
5 her. The exam itself changed between the second and  
6 the third of December where I no longer had some of  
7 the findings that I had on the first.

8 Q I'm sorry. You must have misunderstood the  
9 question. When you examined her body, her let's say  
10 her exterior extremities, did you find any bruises?

11 A No.

12 Q Did you find any cuts?

13 A No.

14 Q Okay.

15 Did you find anything of a concerning nature  
16 with a possibility of nonaccidental injury? Any  
17 external examination of the child?

18 A No.

19 Q Including the head, any finding of external  
20 nonaccidental injury?

21 A No.

22 Q In fact, your testimony is there was no lesions on  
23 the child, right? Is that your testimony?

24 A On the exterior, yes.

25 Q Okay.

1 In fact, there were, were there not?

2 A (No verbal response.)

3 Q On the head of the child?

4 A To --- to correlate with nonaccidental injury?

5 Q No.

6 Any lesions?

7 A I mean --- I can --- I can essentially --- I mean as  
8 per my recollection she had cutis aplasia, yes.

9 Q Right. She had it.

10 MS. POPE-STARNES: I'm going to object.  
11 It's a mischaracterization of his testimony. He  
12 said that she had cutis --- she had this condition.  
13 Counsel is arguing with him. The lesions, the  
14 Doctor is testifying to something different.

15 THE COURT: In fairness the question  
16 was, 'Were there any outward signs on her head'.

17 MS. POPE-STARNES: No. The questions  
18 were --- was, did she have any lesions. He's not  
19 asking what the word lesions means to him. The  
20 Doctor's testified that she had this condition.

21 THE COURT: Then Doctor, the question  
22 that was put to you, 'Were there any lesions'?

23 THE WITNESS: Not that I could observe.

24 THE COURT: Okay.

25 Q (By Mr. White, continuing) So you wouldn't classify

1 the aplasia cutis congenita that was on her head as a  
2 lesion?

3 A No.

4 Q Now you said your diagnosis was that it was severe  
5 head injury nonaccidental. Doctor, please explain  
6 to the Jury what that --- what that diagnosis was  
7 based upon?

8 A Yes. Umm --- and to sort of make that simple, I  
9 essentially brought together a number of findings.  
10 So clinical findings at the bedside. Treatment.  
11 All the laboratory tests that were done. And the  
12 most worrisome findings were essentially what I saw  
13 in the images of her brain. The CT showed  
14 collection of blood between the brain and the skull.  
15 The MRI that was done later that day actually showed  
16 extensive collections of blood and evidence of injury  
17 to the brain with what was described as restricted  
18 diffusion on the MRI which means a period of injury  
19 related to a period of reduced blood flow and oxygen  
20 to the brain. Nonaccidental injury essentially  
21 means simply put that you have an infant who has this  
22 extent of injury that could not have been caused by  
23 him or herself that is a nonaccidental injury.

24 Q I'm sorry. By what itself?

25 A By him or herself.



1 Q Oh I see. By the child being him or herself.

2 So what you're saying is, you have extensive  
3 head injury or brain injury?

4 A Yes.

5 Q No exterior injury to the skull?

6 A Right.

7 Q The interior injury that could not have been caused  
8 by the child?

9 A Yes.

10 Q And you know from reviewing the MRI and this CAT scan  
11 that there was both old and new blood?

12 A That is true.

13 Q Chronic and acute subdural hematomas in that child,  
14 correct?

15 A That is true.

16 Q Okay.

17 And you know from reviewing the past MRI of  
18 August thirty-first (31st), that child had a subdural  
19 hematoma as of August thirty-first (31st), two  
20 thousand and six (2006), isn't that true?

21 MS. POPE-STARNES: Objection. No  
22 foundation. There's been no testimony given to  
23 review that.

24 MR. WHITE: Let me rephrase that.

25 Q **(By Mr. White, continuing)** Did you review the

1 August thirty-first (31st) MRI?

2 A The report of it.

3 Q Then you know that the child had blood products on --  
4 - in the subdural space on August thirty-first  
5 (31st), two thousand and six (2006), correct?

6 A No.

7 Q You didn't know that?

8 A I would defer to the radiologist who specializes in  
9 that field of reading images of the brain.

10 Q Okay.

11 But you've read the report, right?

12 A Yes.

13 Q And the indication in the report was at least that  
14 there was blood products or a lipoma, correct?

15 A The --- that was the report that there was the  
16 possibility of a lipoma or some other lesion that  
17 needed to be correlated clinically.

18 Q Okay.

19 A That was in the report.

20 Q And did this cause you any concern when you were  
21 making your diagnosis that possibly as early as  
22 August thirty-first (31st) of two thousand six (2006)  
23 that the child may have had a hematoma in the  
24 subdural space?

25 A I --- I did not --- I was concerned not based on that

1 MRI or CT in August but more with the most recent  
2 that actually showed collection of blood or hematoma,  
3 as you said, of different ages. Even from the MRI  
4 done on the second of December.

5 Q The fact of the collection of blood of different  
6 ages, does that in and of itself, mean it's not  
7 accidental injury in your mind?

8 A In itself in my mind means that whatever this is, is  
9 of a repetitive nature.

10 Q Okay.

11 So --- and did you make a determination how old  
12 that chronic subdural hematomas were?

13 A I did not.

14 Q Okay.

15 Could it be done in your mind?

16 A By a neuroradiologist.

17 Q Did it concern you Doctor that Madison could have a  
18 chronic subdural hematoma that became symptomatic on  
19 November thirtieth (30th), two thousand six (2006)?

20 A No.

21 Q Now the fact that a person has retinal hemorrhages  
22 means that the brain is swelling causing pressure to  
23 the veins around the eyes, correct?

24 A No.

25 Q That's not what it means?

1           Not an increase in venous pressure around the  
2           retina?

3   A     I --- I once again would defer to ophthalmologists  
4           and neuro-ophthalmologists in terms of interpretation  
5           on that.   From my training and from my experience  
6           the occurrence of retinal hemorrhages and  
7           intraretinal hemorrhages and holding onto the fact  
8           that I already had evidence of collection of blood  
9           between the brain and the skull, essentially to me  
10          means shearing injury.

11   Q     Essentially means that she was a shaken-baby?

12   A     I wouldn't say that.   I would say essentially that  
13           there was --- there had to have been some kind of  
14           shearing force applied to her.

15   Q     Okay.

16                 What do you mean shearing force?   Please  
17                 explain that to the Jury.

18   A     The --- the space between the brain and the skull is  
19           known as the subdural space.   There's several layers  
20           of cover there or coverings of the brain.   So you  
21           have what is known as the pia mater, the arachnoid  
22           mater and the dura mater.   Between the dura mater  
23           and the skull we have that subdural space.   Bridging  
24           that space are these blood vessels.   And the only  
25           way you can have blood go from within the blood

1           vessels between the brain and the skull is for breach  
2           of the vessels to occur.   And it's usually because  
3           of some kind of shearing of the blood vessels, of  
4           these bridging veins.

5   Q       Okay.

6           My question is, again, what do you mean by  
7           shearing, S H E A R I N G?   Shearing, what does that  
8           mean?

9   A       Essentially it means you have some kind of a force  
10          that moves you in a certain direction.   When you  
11          have a fixed structure that essentially moves in a  
12          reverse direction so you have shearing across that  
13          structure.

14   Q       Acceleration, deacceleration (phonetic) forces.

15   A       That could be an analogy.

16   Q       Okay.

17          Would the diffuse absolve an injury to you?

18   A       From the MRI?

19   Q       Yeah.

20   A       Once again I would defer to the neuroradiologist in  
21          terms of that evaluation.

22   Q       Was Madison suffering from global hypoxic ischemia?

23   A       That was --- that was ---

24   Q       (Interposing)   It's a 'Yes' or 'No' question.

25   A       That is not something I can interpret from the

1 bedside findings.

2 Q Well you reviewed the records in the case correct?

3 A Yes.

4 Q All the MRI's, the radiological tests, correct?

5 A Yes.

6 Q All the skeletal surveys, everything that was done in  
7 this case. That's part of your job, correct?

8 A Yes.

9 Q Okay.

10 And wasn't there a finding of global hypoxic  
11 ischemia, isn't that true?

12 A Yes.

13 MR. WHITE: Nothing further.

14 THE COURT: Counsel?

15 **REDIRECT EXAMINATION**

16 **BY MS. POPE-STARTNES:**

17 Q Doctor Odetola, can you explain to the Jury why you  
18 didn't go to the legal department and ask for legal  
19 action to be taken to force the craniectomy?

20 A I was --- I was essentially dealing with a situation  
21 that would reflect all the different treatment  
22 options that I offered. Umm --- and in that  
23 situation I knew the next step would have to be a  
24 very invasive step where this procedure could be  
25 attempted to try to control the elevated pressure or

1 intracranial hypertension in this case. Umm --- the  
2 data out there in terms of scientific --- scientific  
3 evidence for decompressive craniectomy in adults and  
4 children who suffer trauma to the head isn't  
5 conclusive. In this instance it would really  
6 require consent, informed consent, from the parents  
7 for one to be able to have this child undergo this  
8 procedure.

9 I was also facing a situation where the  
10 pressures in the brain essentially were going up, up,  
11 up. And I was trying to keep up with her blood  
12 pressure to try and get some blood flow to the head.  
13 And I knew that if I wasn't able to control that  
14 pressure outcomes would be very bad. That the  
15 prognosis would be very, very grave.

16 Why didn't I proceed with talking with the legal  
17 team? The fact that this was going to be a very  
18 invasive procedure without huge scientific evidence  
19 for benefit.

20 Q Now at the point that Madison was removed from life-  
21 support does your hospital have a protocol that has  
22 to be followed in order to do that?

23 A Yes.

24 Q What is that protocol?

25 A According to most things, criteria has to be

1 satisfied for one to be able to withdraw support,  
2 life-support technology. We would have to make sure  
3 that the blood-pressure was normal for age or  
4 appropriate for age. We had to make sure --- we  
5 would have to make sure, correction, it would be  
6 important to also make sure that her body temperature  
7 was normal, within normal range. That she wasn't --  
8 - she didn't have in her system medications that  
9 might blunt the ability to breathe. Those would  
10 essentially be the criteria that we would need to  
11 fulfill prior to discontinuing support.

12 Q And based upon your records when Madison was removed  
13 from life-support did she meet those criteria?

14 A Yes.

15 Q And then following the removal from life-support was  
16 Madison able to sustain life on her own?

17 A Per the report, no.

18 Q Thank you.

19 MS. POPE-STARNES: I have no other  
20 questions.

21 THE COURT: Mr. White, anything further?

22 MR. WHITE: No further questions Your  
23 Honor.

24 THE COURT: Thank you Doctor. You're  
25 all set.



1 Counsel approach.

2 (Whereupon a discussion was held at the Bench, out of  
3 hearing of the Jury and the Court Reporter.)

4 \* \* \*

5 THE COURT: Ladies and Gentlemen, we  
6 have no additional witnesses for today. Tomorrow  
7 morning should be eight-thirty (8:30) and we'll be  
8 going all day. Please remember don't discuss the  
9 case. Thank you.

10 THE CLERK: All rise for the Jury.  
11 (Whereupon the Jury was returned to the Jury room.)

12 \* \* \*

13 THE COURT: You may all be seated.

14 The record will reflect that the Jury is  
15 excused. Just scheduling. Do we need anything for  
16 the record as far as either of you are concerned?

17 MS. POPE-STARNES: No I don't think so.

18 MR. WHITE: Yes. I do if I may. I  
19 would like is Kevin Schuldt going to testify  
20 tomorrow?

21 MS. POPE-STARNES: Yes.

22 MR. WHITE: Then I will not subpoena him  
23 tonight.

24 THE COURT: Okay.

25 MR. WHITE: All right?

1 THE COURT: All right. Good enough.  
2 Okay then we'll --- I'll just diplomatically tell the  
3 Jury scheduling wise that we'll end for the day and  
4 we'll proceed tomorrow at eight-thirty (8:30)  
5 tomorrow and go to it that way. How does that  
6 sound?

7 MR. WHITE: Sounds good.

8 THE COURT: Thank you everyone. Have a  
9 good evening.

10 (Whereupon the matter was concluded for this day.)

11 \* \* \*

STATE OF MICHIGAN)

COUNTY OF OAKLAND)

I, Barbara Reznick, Court Reporter, do hereby  
certify that the foregoing pages comprise a full, true, and  
correct transcript of the proceedings had In the Matter of  
McBurney before Honorable Daniel Patrick O'Brien in  
Pontiac, Michigan on February 27, 2008.



Barbara Reznick, CER 1333

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